IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 800 of 2005

Mr.Kenneth Michael Gonsalves & Anr. .. Appellant

versus

Shri Ramesh Nagesh Parsekar & Anr. .. Respondents

...

Ms.Swati Borwankar for the appellant.

Mr.S.B. Prabhavalkar for the respondent no.1.

CORAM : B.H. MARLLAPALLE,J

DATED : 1st September 2005

P.C.:

1. Heard Ms.Swati Borvankar, the learned counsel for the appellant defendant who are aggrieved by the order dated 4th April 2004 passed by the learned Judge of the City Civil Court, Mumbai making Notice of Motion 1725 of 2004 absolute. The said Notice of Motion was filed in S.C. Suit no.2106 of 2004. In the Notice of Motion, the plaintiff had

claimed for temporary injunction towards the suit property viz. CTS no.89, Hissa no.4, Survey no.105, Goregaon (W) and admeasuring about 1011.72 sq.m.

2. Both the parties had submitted documents. The documents submitted by the defendant went to show that Ranjibai was doing some farming activities but there was no prima facie evidence to show that the said farming activities were being carried out on the suit plot. On the other hand,, the plaintiff had submitted 7/12 extracts and form no.6 which was in the name of Dattatraya Chintaman Thorat who had purchased the suit property from one Natalbai Patil, Nicholas Patil and Edward Gonsalves somewhere on 5th October 1957. By a deed of conveyance and inturn the plaintiff had purchased the said property from Dattatraya Thorat by deed of conveyance dated 3rd December 1986, the documents submitted by the plaintiff also show that Natalbai and Mingel Manu Patil were the only Legal representatives of the deceased Kabjedar. Based on these documents, the Court below has recorded a prima facie finding that the plaintiff has been in possession of the suit plot and therefore, an order of injunction came to be passed by considering the issue of balance of

convenience.

3. No interference is called for in the said order and therefore, appeal is dismissed in limine.

B.H. MARLAPALLE, J